

Pursuant to the Commission's Public Notice released February 13, 2003 (DA 03-436), subsequent scheduling orders (DA 03-635 and 03-943), and Section 1.2 of the Commission's Rules, 47 C.F.R. §1.2, AT&T Corp. ("AT&T") submits these further comments in opposition to the July 15, 1996 "Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2" ("Joint Petition") filed by Combined Companies, Inc. ("CCI"), Winback & Conserve Program, Inc., ("Winback & Conserve") and three other companies (One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc.), all five of which were owned by Alfonse G. Inga (collectively referred to as the "Petitioners" or "Inga Companies"). These further comments supplement AT&T's Comments filed August 26, 1996 in opposition to the Joint Petition.

The Public Notice requested additional comments on two issues regarding AT&T's Tariff F.C.C. No. 2 in effect in January 1995.¹ First, the Commission seeks comment "on the nature of the relationship, if any, between AT&T and the end-user customers of AT&T's customers, under AT&T's Tariff No. 2 generally, and specifically, under the tariff provisions governing the RVPP and CSTP II Plans at issue in this matter." Second, the Public Notice requested comment on the remedy that AT&T could exercise under its AT&T's Tariff F.C.C. No. 2 "if AT&T had reason to believe that its customer is violating Section 2.2.4 of that tariff by [u]sing or attempting to use [800 service] with the intent to avoid the payment, either in whole or in part, of any of [AT&T's] tariffed charges by ... [u]sing fraudulent means or devices, tricks, [or] schemes."

As shown below, as in any other resale arrangement, under the tariffs for Wide Area Telephone Service (inbound "WATS" or "800" service) governing the Revenue Volume Pricing Plan ("RVPP") and the Customer Specific Term Plans II ("CSTP II") at issue in this matter the Petitioners were AT&T's customers of record. As the federal district court expressly found in this referred proceeding, AT&T does not have any carrier relationship with Petitioners' customers (the "end users"). Rather, AT&T was the underlying service provider for the Petitioners. Although AT&T also rendered bills to

¹ Effective July 31, 2001, the Commission preemptively detariffed AT&T's service offerings under its general interstate tariffs, including AT&T Tariff F.C.C. No. 2. Federal Communications Commission, News Release, "Detariffing Of Long Distance Telephone Industry To Become Effective At The End Of The Month," 2001 WL 838742 (F.C.C. July 25, 2001); *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, 11 FCC Rcd 20730 (1996) (Detariffing Order) and *id.*, 15 FCC Rcd 22321 (2001) (setting forth the history of the Detariffing Order).

Winback & Conserve's end users on behalf of the latter entity, the billing arrangement selected by the reseller did not create any carrier-customer relationship between AT&T and the end users. Thus, the Commission held in *AT&T Corp. v. Winback and Conserve Program, Inc.*² that this billing arrangement did not preclude a finding of "slamming" when AT&T customers were switched to one of the Petitioners' CSTP II plans in dispute here, finding that their prior relationship with AT&T *had been terminated* (albeit without their authorization).

With respect to the Commission's second question, Section 2.8.2 of AT&T Tariff F.C.C. No. 2 permitted AT&T to "take immediate action to temporarily suspend service" where, as here, an aggregator customer attempted to "circumvent [AT&T's] ability to charge for its services as specified in Section 2.2.4 (Fraudulent Use)." The action authorized under the tariff provision subsumed the related measure of withholding AT&T's consent to, or otherwise refusing to permit or accept, attempted transfers of traffic by the Inga Companies without also transferring the underlying CSTP II plans when the transfers were designed to defraud AT&T.

Accordingly, the Commission should deny the Petition, and should instead issue the ruling requested by AT&T in its Comments filed in 1996 that shortfall charges may be imposed where, as here, post-June 17, 1994 CSTP II replacement plans are discontinued or reach an anniversary date.

² 16 FCC Rcd 16074 (2001) at 16075 and 16082-82, ¶¶ 4 (describing the billing arrangement) and 23-24 (setting forth and rejecting W&C's argument that this billing arrangement precluded a finding of slamming).

BACKGROUND

This case is a declaratory ruling proceeding, arising out of a primary jurisdiction referral from the United States Court of Appeals for the Third Circuit. Petitioners were non-facilities based “aggregators” that operated as resellers of AT&T’s 800 services to end users. In the federal court proceeding, Petitioners challenged AT&T’s refusal to consent to CCI’s attempt to transfer the traffic (*i.e.*, transfer of end-user locations), but not the CTSP II plan itself, to Public Service Enterprises of Pennsylvania, Inc. (“PSE”). AT&T objected not only on the grounds that the proposed location-only transfer violated the relevant CSTP II tariff provision (AT&T Tariff F.C.C. No. 2, Section 2.1.8), but also because the proposed transfer violated the “fraudulent use” provisions of Section 2.2.4, in that the transfer had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall and termination charges.

The federal district court and Third Circuit referred to the Commission the issue “whether section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction.”³ Petitioners then filed a Joint Petition for Declaratory Ruling asking that the Commission rule, *inter alia*, that “[a]t the time of the attempted transfer . . . neither Section 2.1.8 of AT&T’s Tariff F.C.C. No. 2, nor any other provision of AT&T’s Tariff F.C.C. No. 2 prohibited the transfer of the traffic without the transfer of the underlying plans.” Joint Petition at 7 (emphasis added).

³ May 19, 1995 Order at 15 (Joint Petition, Exhibit B); Third Circuit Opinion at 3 (Joint Petition, Exhibit A).

AT&T opposed the Petitioners' request for declaratory relief because, in the federal district court proceedings, AT&T had proffered evidence clearly demonstrating the reasonableness of its belief that the transfer of the traffic independent of the underlying plans was undertaken with the intent to avoid the payment of AT&T's tariffed shortfall and termination charges.⁴ The Joint Petition therefore raised material issues of fact with respect to "other provision[s] of AT&T's Tariff F.C.C. No. 2" – specifically, the antifraud provisions of Sections 2.2.4 and 2.8.1 of AT&T's Tariff F.C.C. No. 2.⁵ AT&T, on the other hand, urged the Commission to issue a declaratory ruling that under the applicable tariff provisions shortfall charges may be imposed where, as here, post-June 17, 1994 CSTP II replacement plans are discontinued or reach an anniversary date.

In a second, related proceeding AT&T filed a formal complaint pursuant to Section 208 of the Communications Act alleging that, prior to transferring its CSTP II plan to CCI, Winback & Conserve violated Section 201(b) of the Act by changing the 800-number service provider of 40 end users from AT&T to Winback & Conserve

⁴ As described in affidavits submitted by AT&T, Alfonse Inga, who owned and controlled Petitioners, had repeatedly threatened AT&T employees that he would isolate his companies' liabilities under the CSTP II plans in companies with no assets, have these shell companies file for bankruptcy, and thus leave AT&T with no recourse. AT&T's Initial Comments in Opposition at 12, n.12.

⁵ Declaratory relief is inappropriate where, as here, material facts are disputed because such fact-based disputes are better resolved through the Commission's complaint procedures where the parties can use discovery to develop the factual record to resolve this dispute. *In the Matter of Cascade Utilities*, 8 FCC Rcd 781, 782 (1993); *Aeronautical Radio, Inc.*, 5 FCC Rcd 2516 (Com. Car. Bur. 1990) and *American Network, Inc.*, 4 FCC Rcd 550, 551 (Com. Car. Bur. 1989).

without obtaining the end users' authorization. *AT&T Corp. v. Winback and Conserve Program, Inc., supra*. Relying on admissions in Winback & Conserve's own pleadings, the Commission's decision succinctly described the carrier-customer relationship between AT&T and Winback & Conserve, and between the latter entity and its end users:

“Defendant W&C [Winback & Conserve] was, through late 1994/early 1995, a non facilities-based ‘reseller’ of interexchange telecommunications services. In 1993, W&C subscribed to AT&T’s Customer Specific Term Plans II for 800-number service (‘CSTP II Plans’). W&C resold the 800-number service to third-party end users, including the 40 [e]nd [u]sers at issue here. *The end users, including the 40 [e]nd [u]sers, were W&C’s customers.*”⁶

The Commission went on in that decision to hold (1) that changing an end user's 800-number service provider without authorization violates Section 201(b) of the Act; and (2) that AT&T had met its burden of proving slamming by Winback & Conserve with respect to ten of the end users.⁷

⁶ 16 FCC Rcd at 16075 (¶ 3)(footnotes omitted).

⁷ *Id.* at 16978, 16081 (¶¶ 12 and 19).

ARGUMENT

I. THE FEDERAL DISTRICT COURT AND THE COMMISSION HAVE ALREADY FOUND THAT UNDER THE RELEVANT TARIFFS AT&T DID NOT HAVE ANY CARRIER RELATIONSHIP WITH PETITIONERS' END-USER CUSTOMERS

The fact that AT&T had no carrier-customer relationship with the Petitioners' end-users under the relevant tariffs in effect as of January, 1995 is indisputably established by rulings of the federal district court in this proceeding, admissions by Petitioners in their Joint Petition, and the Commission's decision in *AT&T Corp. v. Winback and Conserve Program, Inc.*

The district court found in its May 19, 1995 Order (at 3) that the Petitioners, who had contracted for AT&T's 800 inbound services pursuant to the CSTP II arrangements, were AT&T's "customers of record" on both the CSTP II volume and RVPP discount plans. The district court likewise found (*id.*) that Petitioners' customers (the "end users") "do not have any direct affiliation with AT&T." Indeed, as conceded by Petitioners, it was "CCI and the Inga Companies [that] solicit[ed] small business[es] to join their respective aggregation programs." Joint Petition at 9.

The allocation of financial responsibility between AT&T and the Petitioners for the resold 800 service underscores the absence of any carrier-customer relationship between AT&T and the Petitioners' end users. AT&T Tariff F.C.C. No. 2, in effect in January 1995 provided that "[t]he Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan," and that "[s]hortfall and/or termination

liability are the responsibility of the Customer” (emphasis added).⁸ The tariff then set out how any penalty for shortfall and/or termination liability would be handled *for billing purposes*,⁹ but the *liability* was solely that of AT&T’s customer -- *i.e.*, the Petitioners, not the end-users. Similarly, AT&T Tariff F.C.C. No. 2, Section 3.3.1.M, 9th Revised page 61.3.1, in effect in January 1995, provided that “[t]he Customer of record will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan” with similar billing procedures regarding any penalties.¹⁰

Moreover, as AT&T’s customers for all of the locations and all of the traffic generated under the tariffed plans, in terms of the *transfer* of such accounts the Petitioners would, but for the attempt to bifurcate the traffic from the underlying plans, remain jointly and severally liable with the new customer for all obligations existent at the time of the transfer. May 19, 1995 Order at 6, AT&T Tariff F.C.C. No. 2, § 2.1.8.

AT&T acted as a billing agent for Petitioners because they selected a billing option under the CSTP II plan pursuant to which AT&T sent an itemized bill on

⁸ Section 3.3.1.Q, 19th Revised page 61.17 (appended as part of Attachment 1 to these Further Comments). Also appended as Attachment 2 is AT&T Tariff F.C.C. No. 2, Section 2.9 (Definitions) in effect in January 1995 that contains the definition of “Customer.” Under that tariff provision, the Inga Companies that subscribed to the CSTP II and RVPP were the “Customers” for those plans.

⁹ The tariff section provided that shortfall liability was to be “apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.”

¹⁰ This tariff provision is appended as part of Attachment 3.

behalf of each of the Petitioners to the end user, May 19, 1995 Order at 4, with AT&T then remitting to Petitioners the difference between the tariffed rates charged by AT&T to the Petitioners under the CSTP II/RVPP and the price Petitioners gave their end users as reflected in the end-users bills. *Id.*, *see also* Joint Petition at 10. However, that billing arrangement created no carrier-customer relationship between AT&T and the end-users. To the contrary, and as is typical for billing agency agreements, Petitioners were “lawfully responsible for any deficiency in usage,” May 19, 1995 Order at 5, and “[i]f the end users fail to pay their bills or if there is any shortfall in usage under an aggregator’s plan, that aggregator is liable to AT&T for the deficiency.” *Id.* at 5-6.

The Commission’s decision in *AT&T Corp. v. Winback and Conserve Program, Inc.* clearly held that this billing arrangement created *no direct, or indirect*, relationship between AT&T and Petitioners’ end users. There the Commission held that when Petitioners misled certain AT&T customers to sign up to Petitioner’s CSTP II plans it had “slammed” them -- that is, changed their relationship from customers of AT&T to customers of Winback & Conserve. There clearly could not have been any “slamming” if AT&T had any continuing carrier-customer relationship with Winback & Conserve end-users. The Commission fully considered and rejected the claim that the billing arrangement in any way precluded a finding of “slamming.”¹¹ Indeed, the Commission found that a letter Winback & Conserve sent to the slammed end users “may well lead

¹¹ 16 FCC Rcd 16,074 (2001), ¶¶ 4 (describing the billing arrangement) and 23-24 (setting forth and rejecting Winback & Conserve’s argument).

end users to believe *erroneously* that AT&T was their service provider” (emphasis added).¹²

II. SECTIONS 2.2.4 AND 2.8.1 OF AT&T TARIFF F.C.C. NO. 2 PERMITTED AT&T TO REFUSE TO PERMIT OR ACCEPT THE ATTEMPTED TRANSFER OF TRAFFIC UNDER THE INGA COMPANIES’ PLANS

Section 2.2.4 of AT&T Tariff F.C.C. No. 2 as in effect in January 1995, prohibited customers from taking actions that constitute “[t]he fraudulent use of, or the intended or attempted fraudulent use of, WATS,” and defines “fraudulent use” to include:

“Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by . . .

2 . Using fraudulent means or devices, tricks, schemes ...”¹³

This section is not limited to “the actual theft of WATS services” as claimed by Petitioners, in their Reply filed September 23, 1996; the term “fraud” used in the tariff is not limited to “theft,” connoting “quasi-criminal” conduct, as Petitioners argued there. The term encompasses civil fraud, and Petitioners’ scheme clearly qualifies under the civil terms actually used in the tariff. Petitioners’ scheme here was to split the traffic from the underlying plan (what Petitioners have referred to as “fractionalization”) pursuant to an admitted desire “to avoid payment” to AT&T for WATS services by isolating the companies' liabilities under the CSTP II plans in companies with no assets, having these shell companies file for bankruptcy, and thus leaving AT&T with no recourse.

¹² *Id.* ¶ 27.

¹³ The tariff section is appended as Attachment 4.

Section 2.8.1, as in effect in January 1995, provided in relevant part that AT&T “may take immediate action to protect its . . . interests when certain regulations contained in this tariff are violated.”¹⁴ The “certain regulation” that was violated here is Section 2.8.2 which provided that “[t]he Company [*i.e.*, AT&T] may take immediate action to temporarily suspend service when a Customer violation . . . circumvents the Company’s ability to charge for its services as specified in Section 2.2.4.” The Petitioners’ “fractionalization scheme” was a transparent attempt to circumvent AT&T’s “ability to charge for its services as specified in Section 2.2.4” because, as explained above, AT&T could not realistically recover its lawful charges from shell companies which had no right to revenue from the transferred locations under the plans that were not transferred. “Suspension of service,” in these circumstances, certainly subsumes the action taken by AT&T to protect its interests by refusing to consent to the fraudulent transfer of locations without the underlying plans, but allowing service to continue if the entire plan was transferred and/or the entire plan were retained by CCI, the entity then currently responsible for payment.

¹⁴ The tariff provision is appended as Attachment 5.

CONCLUSION

For the reasons set forth above and in AT&T's Comments, Petitioners' request for the four Declaratory Rulings set out in the Joint Petition should be denied, and AT&T's request for a ruling granted.

Respectfully submitted,

AT&T Corp.

By /s/ Aryeh S. Friedman

Mark C. Rosenblum

Peter Jacoby

Aryeh S. Friedman

Its Attorneys

Room 3A231

One AT&T Way

Bedminster, NJ 07921

Tel.: (908) 532-1831

April 2, 2003

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 2nd day of April, 2003, a copy of the foregoing "AT&T Corp. Further Comments" was served by U.S. mail, first class delivery, by hand delivery or by e-mail, to the parties listed below.

Al Inga
55 Main Street
Little Falls, NJ 07424
(By First Class U.S. Mail)

Gerald P. Scala
91 Main Street, Suite 200
West Orange, NJ 07052-5403
(By First Class U.S. Mail)

Charles H. Helein, Esq.
Rogena Harris, Esq.
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102
Counsel for Petitioners
(By First Class U.S. Mail)

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St. SW, Room TW-B204
Washington, D.C. 20554
(By Hand Delivery)

Chief, Pricing Division
Wireline Competition Bureau
445 12th St. SW, Room 5-A225
Washington, D.C. 20554
e-mail: jnitsche@fcc.gov

Qualex International
Portals II
445 12th St. SW, Room CY-B402
Washington, D.C. 20554
e-mail: qualexint@aol.com

/s/ Karen Kotula
Karen Kotula

Attachment 1

AT&T COMMUNICATIONS

Adm. Rates and Tariffs
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Issued: December 9, 1994

TARIFF F.C.C. NO. 2

18th Revised Page 61.16
Cancels 17th Revised Page 61.16
Effective: December 12, 1994

3.3.1. Components and Rates (continued)

Q. AT&T 800 Customer Specific Term Plan II - The AT&T 800 Customer Specific Term Plan II (CSTP II) is a term plan, in lieu of all other specific term plans and/or service discounts, that offers the Customer term plan discounts applicable to usage for the Customer's AT&T 800 Service-Domestic, AT&T 800 READYLINE, AT&T MEGACOM 800 Service, 800 Validator, AT&T 800 Gold Services, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE-Overseas, AT&T 800 READYLINE-Mexico, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Mexico, 800 Nodal Validator-Canada, AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands (available under Tariff F.C.C. No. 14) and the following Intrastate offerings: AT&T 800 READYLINE, AT&T MEGACOM 800 Service, AT&T 800 Gold Service-Switched and AT&T 800 Gold Service-Nodal. Customers must choose an annual net usage revenue commitment of between \$12,000 and \$33 million for each year of a three-year term commitment. Customers may also choose the CSTP II Option A as specified in Section 3.3.1.Q.7., following which provides a two-year term commitment or CSTP II Option B as specified in Section 3.3.1.Q.8., following, which provides a three-year term commitment or CSTP II Option C as specified in Section 3.3.1.Q.9., following, which provides a one-year Term commitment. A one time usage credit will be applied to the Customer's bill equal to 1/2³ of the first year's annual revenue commitment. In addition, this plan applies a percent discount to the total amount of interstate and intrastate usage revenue for each of the services under the plan. The annual revenue commitment is based on monthly recurring and net usage revenue after the term plan discount and before the application of discounts provided under the Revenue Volume Pricing Plan (RVPP) (see Section 3.3.1.M. preceding). The annual revenue commitment level includes usage and monthly recurring charges for any one, or any combination, of the following Services: AT&T 800 Service-Domestic, AT&T Advanced 800 Service, 800 Nodal Validator, AT&T 800 Service-Canada, AT&T 800 Service-Overseas, AT&T 800 Service-Mexico, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Mexico, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE, AT&T 800 Gold Services, AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands (available under Tariff F.C.C. No. 14), AT&T MEGACOM 800 Service, and the following intrastate offerings: AT&T 800 READYLINE, AT&T MEGACOM 800 Service, AT&T 800 Gold Service-Switched and AT&T 800 Gold Service-Nodal. AT&T 800 Service-Canada, AT&T 800 Service-Overseas and AT&T 800 Service-Mexico volumes will contribute toward the annual revenue commitment but will not be eligible for any discounts. If there are no identical discounts effective for this plan in AT&T's intrastate tariff the discount will be applied to the Customer's total interstate usage revenue. If an identical discount plan is effective in an AT&T intrastate tariff, the discount will

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Cancels 5th Revised Page 61.16.1
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3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

be applied first to the intrastate usage revenue. The discount on the interstate usage will equal the difference between the discount which would have applied on total usage, and the amount of the discount on intrastate usage. There are no intrastate tariffs containing identical discounts at this time. However, when identical discounts are available in an AT&T intrastate tariff, this tariff will provide an availability list. The discount is applied to the annual billed gross usage revenue from the following services: AT&T 800 Service-Domestic, AT&T 800 READYLINE, AT&T MEGACOM 800 Service, AT&T 800 Gold Services and 800 Nodal Validator, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE-Overseas, AT&T 800 READYLINE-Mexico, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Mexico, AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands (available under Tariff F.C.C. No. 14) and intrastate AT&T 800 READYLINE, AT&T MEGACOM 800 Service, AT&T 800 Gold Service-Switched and AT&T 800 Gold Service-Nodal. If the RVPP/Customer Specific Term Plan II Customer's service is restricted and/or denied for non-payment of charges (see Section 2.8.3. preceding), service at the Customer's designated locations will be restricted and/or denied as specified below. The following conditions apply:

- The 800 CSTP II will commence on the first of the billing month following the Customer subscribing to the Term Plan.
- The Customer must subscribe to a new Revenue Volume Pricing Plan (see Section 3.3.1.M.). Customers ordering a CSTP II must also order an RVPP to cover all the same AT&T 800 Services. RVPP discounts apply after the Term Plan discounts.
- If the Customer terminates the CSTP II within the first year, the 1/2% credit must be repaid and will be added to the term plan cancellation penalty.
- There is a \$50.00 per location charge to move a CSTP II location from an existing CSTP II to a new CSTP II or to another existing CSTP II. This charge is not applicable to the first 10 locations moved between plans in each calendar year, when the original plan is not discontinued.
- There is a \$50.00 charge when an existing CSTP II is discontinued and all of its locations are concurrently moved to a new or existing CSTP II with a revenue commitment equal to or greater than the original plan being discontinued.

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3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

- If the Customer terminates the CSTP II within the first year of the plan and concurrently establishes a new CSTP II of greater value, no additional one time 1/2% credit will apply.
- All other specific term plans and service discounts are excluded from the CSTP II with the exception of the \$.01 per minute access line discount. The AT&T 800 Service-Domestic \$.01 per minute access line discount is applied after the Term Plan discount but before the RVPP discount.
- The Customer must commit to an annual commitment for three years as shown in Sections 3.3.1.Q.1. and 3.3.1.Q.8., or two years as shown in Section 3.3.1.Q.7., or one year as shown in Section 3.3.1.Q.9, following.
- The Customer may add or delete an AT&T 800 Service or AT&T Custom 800 Service covered under the plan.
- In the event the Customer converts from another AT&T Term Plan to a CSTP II, there will be no decrease in the percent discount received by the Customer. *
- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.
- The Customer must also provide to AT&T, for each location participating in the above mentioned plan, written authorization for including the locations in the plan, billing account number and/or billed name, type of service, and address to which the bill is to be sent.
- In the event that a location is in default of payment, AT&T will seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted payment.
- In the event of termination of the Customer's RVPP and/or Term Plan, the Customer being terminated must notify the individual locations that the RVPP and/or Term Plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual customers unless they notify AT&T otherwise.
- Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

* This condition applies only to Customers whose CSTP II was in effect or on order prior to July 1, 1993. This does not apply to existing CSTP II Customers that renew their term plan after June 30, 1993.

Attachment 2

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2.9. DEFINITIONS (continued)

Conversion - a Customer request to (1) change to a different service area, (2) change of the AT&T 800 Service telephone number, or (3) separating or combining AT&T 800 Service hunting arrangements.

Country Access Capability - a term that denotes the overseas network control arrangement which allows a Customer to subscribe to AT&T 800 Service-Overseas from a given overseas country and specify the number of simultaneous calls which this Company will attempt to complete from that country to a service group.

Customer - the person or legal entity which orders service (either directly or through an agent).

Attachment 3

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TARIFF F.C.C. NO. 2
29th Revised Page 61.3
Cancels 28th Revised Page 61.3
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3.3.1. AT&T 800 Service-Domestic Components and Rates (continued)

M. Revenue Volume Pricing Plan (RVPP) - A revenue volume pricing plan is available with AT&T 800 Service-Domestic, AT&T Advanced 800 Service, 800 Validator, AT&T 800 Service-Canada, AT&T 800 Service-Overseas, AT&T 800 Service-Mexico, AT&T MEGACOM 800 Service, AT&T MEGACOM 800 HIGH CAPACITY Service, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Mexico, AT&T MEGACOM 800 Service-Canada, AT&T 800 READYLINE, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE Overseas, AT&T 800 READYLINE-Mexico, 800 Information Forwarding Service-1, AT&T Gold Services plus the following Intrastate offerings: AT&T MEGACOM 800 Service, AT&T MEGACOM 800 HIGH CAPACITY Service, AT&T 800 READYLINE, AT&T MultiQuest Service, AT&T MultiQuest HIGH CAPACITY Service and AT&T Gold Intrastate Services. In addition, the following services (available under AT&T Tariff F.C.C. No. 1) are eligible for discounts under RVPP: AT&T MultiQuest, AT&T MultiQuest HIGH CAPACITY Service, and AT&T MultiQuest Express900 Service. AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands (available under Tariff F.C.C. No. 14) is also eligible for discounts under RVPP. A discount will apply to the aggregate monthly billed usage charges and eligible recurring charges for any of these services based on the monthly revenue volume as described below. The amount of the discount will be credited to the Customer's Interstate Services. RVPP discounts are applied after all other applicable discounts are applied. Cx Cx Sy Sy

For AT&T 800 Service-Domestic, Canada, Overseas and Mexico, AT&T 800 READYLINE and AT&T 800 READYLINE-Canada, Overseas and Mexico on an access line and AT&T 800 Gold Service-Dedicated and AT&T 800 Gold Service-Switched on an access line, the discount applies to the monthly recurring charge associated with the routing arrangement and all usage charges. For AT&T Advanced 800 Service, 800 Validator, AT&T MEGACOM 800 Service, AT&T MEGACOM 800 HIGH CAPACITY Service, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Mexico, AT&T MEGACOM 800 Service-Canada, 800 Information Forwarding Service-1, AT&T 800 READYLINE, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE Overseas, AT&T 800 READYLINE-Mexico Service, AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands, AT&T MultiQuest, AT&T MultiQuest HIGH CAPACITY Service, AT&T MultiQuest Express 900 Service, AT&T 800 Gold Service-Switched and AT&T 800 Gold Service-Nodal the discount applies to all monthly recurring charges and all usage charges with the exception of the Incomplete Call Attempt Charge for AT&T MultiQuest HIGH CAPACITY Service and AT&T MEGACOM 800 HIGH CAPACITY Service. If the RVPP/CSTP Customer's service is restricted and/or denied for non-payment of charges (see Section 2.8.3. preceding), service at the Customer's designated locations will be restricted and/or denied as specified below. The following conditions apply: Cx Sy Sy

- The Customer must provide a list of all accounts at all locations that will be included in the plan, must show authorization for including the locations in the plan and must notify the Company of changes in the accounts/locations. The Customer must also provide to AT&T, for each location participating in the above-mentioned plan, billing account number and/or billed name, billed address, type of service, credit references, type of business and address to which bill is to be sent.

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y Material filed under Transmittal No. 7790 became effective on December 6, 1994.

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TARIFF F.C.C. NO. 2
9th Revised Page 61.3.1
Cancels 8th Revised Page 61.3.1
Effective: March 11, 1994

3.3.1.M. Revenue Volume Pricing Plan (continued)

- The Customer of record will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.
- The Customer of record cannot include a Location and Service Specific Term Plan with a Customer Specific Term Plan under the same RVPP.
- In the event that a location is in default of payment, AT&T will attempt to collect charges from that location. Failing this attempt, AT&T will then seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the RVPP discount; if any, and apportion the remaining discount, if any, to all locations not in default, and (2) if payment is not collected, terminate the RVPP for failure of the Customer to pay the defaulted payment.
- In the event of termination of the Customer's RVPP and/or term plan, the Customer being terminated must notify the individual locations that the RVPP and/or term plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual Customers unless they inform AT&T otherwise.
- Any penalty for shortfall and/or termination liability will be apportioned according to usage among all the individual locations designated by the Customer for inclusion under this plan.

Attachment 4

AT&T COMMUNICATIONS
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TARIFF F.C.C. NO. 2
11th Revised Page 21
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2.2 USE

2.2.1. **General** - WATS may be used for any lawful purpose consistent with its transmission parameters. WATS is furnished for the transmission of voice and non-voice communications. For non-voice communications, typical uses are data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the service.

2.2.2.

2.2.3. **Abuse** - The abuse of WATS is prohibited. The following activities constitute abuse:

A. Using WATS to make calls which might reasonably be expected to frighten, abuse, torment, or harass another, or

B. Using WATS in such a way that it interferes unreasonably with the use of the service by others.

C. Using AT&T 800 Service or any other telephone number advertised or widely understood to be toll free, in a manner that would result in (1) the calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call; (2) the calling party being connected to a pay-per-call service; (3) the calling party being charged for information conveyed during the call; unless in either (1), (2) or (3) the calling party has a presubscription or comparable arrangement or discloses a credit or charge card number during the call; or (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services or products. The Customer must also comply with (a) Titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and (b) the regulations prescribed by the Federal Communications Commission and the Federal Trade Commission pursuant to those Titles.

D. Acquiring or reserving an 800 number provided by AT&T for the primary purpose of selling, brokering, bartering or releasing it for a fee or other consideration. Cx
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2.2.4. **Fraudulent Use** - The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:

A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:

1. Rearranging, tampering with, or making connections not authorized by this tariff to any WATS service component, or

Certain material previously found on this page can now be found on Page 22.
Certain material on this page formerly appeared on Page 22.
x Issued on not less than two days' notice under authority of Special Permission No. 94-872.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
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TARIFF F.C.C. NO. 2
5th Revised Page 22
Cancels 4th Revised Page 22
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2.2.4. Fraudulent Use (continued)

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices. Mx
Cx

B. Using WATS in response to an incomplete LDMTS call, which was not completed in order to circumvent the payment of applicable LDMTS charges. Mx

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis. Mx

D. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers. Nx
Nx

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. Reference to This Company - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

Certain material previously found on this page can now be found on Page 21.
Certain material on this page formerly appeared on Page 21.
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Attachment 5

AT&T COMMUNICATIONS
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TARIFF F.C.C. NO. 2
6th Revised Page 44
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2.8. VIOLATION OF REGULATIONS

2.8.1. **General** - The Company may take immediate action to protect its services or interests when certain regulations contained in this tariff are violated. The specific regulations involved and the action(s) which will be taken by this Company are as specified in 2.8.2, 2.8.3 and 2.8.4 Cx following.

2.8.2. **Interference, Impairment or Improper Use** - The Company may take immediate action to temporarily suspend service when a Customer violation results in any of the following:

- subjects Company or non-Company personnel to hazardous conditions as specified in Section 2.7.2.C (Interference and Hazard) preceding,
- circumvents the Company's ability to charge for its services as specified in Section 2.2.4. (Fraudulent Use) preceding, or
- results in an immediate harm to WATS or other Company services as specified in Section 2.7.9 (Minimum Protection Criteria).

In such cases, the Company will make reasonable effort to give the Customer prior notice before suspending service.

If a Customer fails to comply with Sections 2.2. (Use), 2.7.2.C (Interference and Hazard), 2.7.8.A (Answer Supervision), 2.7.8.D (Customer-provided Communications System Failures), and 2.7.9 (Minimum Protection Criteria) preceding, the Company may, on ten days' written notice by certified U.S. Mail to the Customer deny requests for additional service and/or temporarily suspend service to the non-complying Customer. If the Company does not deny or temporarily suspend the service involved on the date of the ten days' notice, and the Customer non-compliance continues, nothing contained herein shall preclude the Company's right to deny or temporarily suspend the service without further notice.

When a violation results in the temporary suspension of service and/or denial of additional service, these restrictions will be removed when the Customer is in compliance with the regulations and so advises the Company.

The Company may also temporarily restrict the ability to place AT&T 800 Service calls from certain telephone numbers when calls from those numbers are made to gain access to a WATS Customer's outbound calling capabilities on an unauthorized basis, or are otherwise made in violation of Sections 2.2.3.A., B., and C and 2.2.4.C of the tariff as described above. The Company will notify the party responsible for the affected telephone number by letter within 48 hours of the restriction. The restriction will be removed within six days, but will be reimposed if unauthorized access to a WATS Customer's outbound calling capabilities on an unauthorized basis or abusive calling recurs. After the second restriction, calling will only be reinstated after the Company discusses with the party responsible for the calling telephone number a method to prevent access to a WATS Customer's outbound calling capabilities on an unauthorized basis or abusive calling. Cx

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2.8. Violations of Regulations (Continued)

2.8.3. Nonpayment of Charges - The Company may disconnect existing service and/or deny requests for additional WATS for nonpayment of charges due as specified in Section 2.5.3 (Payment of Charges) preceding. A written notice will be sent to the Customer at least five days in advance of the restriction and/or denial of additional WATS except as otherwise specified in Sections 3.3.1.M., 3.3.1.N. and 3.3.1.O. following. Upon payment of charges the restriction and/or denial of WATS will be removed.

2.8.4. Fraud or Abuse - In any instance in which AT&T determines that a Customer is operating an AT&T service in violation of Section 2.2.3.C. or D. of this Tariff, AT&T may, immediately and upon written notice to the Customer, and without incurring any liability except for willful misconduct, restrict, suspend or discontinue providing the service. AT&T may, upon direction of the F.C.C., other government agencies, law enforcement officials or the courts, immediately and upon written notice to the Customer, and without incurring any liability except for willful misconduct, restrict, suspend or discontinue providing service which is being operated in violation of Section 2.2.4.D. of this Tariff.

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If AT&T determines that an 800 Service for which AT&T is the carrier is being used in violation of the anti-warehousing or brokering provisions of the Tariff, or in violation of the Federal Communications Commission (F.C.C.) pay-per-call rules or is otherwise being operated in violation of identifiable fraud statutes or rules, AT&T will immediately terminate the service. Simultaneously, AT&T will notify the Customer by certified mail of the action it has taken and the reasons therefore.

Sx

Absent a showing by the Customer that the Tariff has not been violated, AT&T will retain control for two months of all 800 numbers disconnected for anti-warehousing or brokering violations, or for six months of all 800 numbers disconnected for fraud or pay-per-call violations. During the two-month or six-month aging process, AT&T will refuse to transfer the number to any other Customer, will refuse to reconnect the number for the previous Customer except upon direction from the F.C.C. or a court; will refuse to honor transfer of service arrangements between the disconnected Customer and any third party; and will refuse to honor any change of Resp Org forms from the disconnected Customer.

If the F.C.C. or a court directs AT&T to return the number to the control of the disconnected Customer, or if AT&T determines that it has been in error, AT&T will reestablish service without charge to the Customer. AT&T will also insure that the Customer does not incur penalty or other tariffed charges by reason of a disconnection by AT&T that is overruled by the F.C.C. or the courts, or if AT&T determines that it has been in error.

At the end of the two-month or six-month aging period, assuming that there is no outstanding challenge to the disconnection, AT&T will return control of the 800 number to the NASC to be made available on a first-come, first-served basis pursuant to existing industry practices.

Sx

x Material filed under Transmittal No. 7303-Amended became effective on July 28, 1994.
y Issued on not less than three days' notice under authority of Special Permission No. 94-922.